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PATENT APPLICATION

ATTORNEY DOCKET NO. 10992614 -1

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Donald J. Stavely et al

Confirmation No.: 1314

Application No.: 09/955457

Examiner: Chriss S. Yoder III

Filing Date: Sep 17, 2001

Group Art Unit: 2612

Title: System And Method For Simulating Fill Flash In Photography

Mail Stop Appeal Brief - Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF REPLY BRIEF

Transmitted herewith is the Reply Brief with respect to the Examiner's Answer mailed on June 12, 2006.

This Reply Brief is being filed pursuant to 37 CFR 1.193(b) within two months of the date of the Examiner's Answer.

(Note: Extensions of time are not allowed under 37 CFR 1.136(a))

(Note: Failure to file a Reply Brief will result in dismissal of the Appeal as to the claims made subject to an expressly stated new ground rejection.)

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THE ASSISTANT COMMISSIONER OF PATENTS
Washington, D.C. 20231

REPLY BRIEF

Pursuant to the provisions of 37 CFR § 41.41, Applicant hereby replies to the Examiner's answer mailed June 12, 2006.

ISSUES

1. Whether claims 1, 7, and 14 are unpatentable under 35 U.S.C. § 103(a) over Nishimura et al. (U.S. Pat. No. 5,617,141).

2. Whether claims 2-4, 8-11, and 23-24 are unpatentable under 35 U.S.C. §103(a) over Nishimura et al. (U.S. Pat. No. 5,617,141) in view of Parulski et al. (U.S. Pat. No. 5,563,658).

3. Whether claims 5, 6, 12, and 13 are unpatentable under 35 U.S.C. §103(a) over Nishimura et al. (U.S. Pat. No. 5,617,141) in view of Miyadera (U.S. Pat. No. 5,550,587).

4. Whether claims 15-22 are unpatentable under 35 U.S.C. §103(a) over Nishimura et al. (U.S. Pat. No. 5,617,141) in view of Kikuchi (U.S. Pat. No. 6,757,020).

ARGUMENT

Applicant has fully argued each of the grounds of rejection in the Appeal Brief filed April 18, 2006, and believes those arguments sufficient to show all of Applicant's claims allowable over the cited references. However, the examiner persists in rejecting all claims under 35 U.S.C. § 103(a). Without acquiescing to any other arguments presented by the examiner, this Reply Brief is directed to addressing two particular points raised in the Examiner's Answer. Applicant believes the examiner's *prima facie* case of obviousness to be deficient, and that in maintaining the rejection, the examiner ignores the plain meaning of the claim terms and misstates scientific fact.

A. The examiner ignores the plain meaning of the terms of Applicant's claims

Applicant's independent claim 1 recites in part selectively adjusting the brightness of regions of the photograph based on the distance information. Independent claims 7 and 14 include similar elements. Each of the remaining claims depends from one of these independent claims, and therefore also includes this or a similar element. In order to make out a *prima facie* case of obviousness for any of Applicant's claims, it is necessary that the examiner show that this element is taught or suggested by the cited references.

The language of claim 1 is plain. Regions of a photograph are selectively adjusted in brightness. The use of the plural word regions makes it clear that more than one region is involved.

The regions are selectively adjusted. According to Webster's Third New International Dictionary, "selectively" means "in a selective manner". "Selective" means "of, relating to, or characterized by selection". "Selection" means "the act or process of selecting". To "select" means "to choose *from a number or group*" (emphasis added). In other words, the fact that the brightness of the regions is selectively adjusted further indicates that more than one region is adjusted and that the regions are adjusted separately.

Clearly, in the method of claim 1, multiple regions of a photograph are adjusted, and each is adjusted independently of the others, based on distance information previously determined. This meaning is even more clear when claim 1 is read in light of the specification.

None of the cited references teaches or suggests selectively adjusting the brightness of regions of the photograph based on the distance information. The examiner relies on Nishimura et al. (U.S. Pat. No. 5,617,141) to supply this claim element, citing column 5 lines 33-48 of the Nishimura patent. (Examiner's Answer pages 14-15) The cited passage does not support the rejection.

Applicant has shown that Nishimura, rather than selectively adjusting the brightness of regions of a photograph, adjusts the exposure of an entire photograph substantially uniformly. (Appeal Brief pages 3-4) The examiner apparently agrees, stating that "in the Nishimura reference, the brightness of the 'regions' (i.e. the entire image) is adjusted...." (Examiner's Answer page 15) The examiner reconciles this difference between Nishimura and Applicant's claims by interpreting Applicant's "regions" to "include the entire image". (Examiner's Answer page 15) This interpretation ignores the plain meaning of the claim terms, which clearly indicate that multiple regions of a photograph are adjusted separately.

Applicant further respectfully notes that the device of Nishimura adjusts the exposure of a photograph at the *time the photograph is taken* using a "stop" (Nishimura et al. column 2 lines 10-14 and column 3 lines 48-49) or an exposure time (column 4 lines 5-9), whereas Applicant claims selectively adjusting the brightness of regions of the photograph *after the photograph has been taken.* In other words, Nishimura does not even adjust an existing photograph in the way Applicant's disclosure contemplates.

Because none of the cited art teaches or suggests selectively adjusting the brightness of regions of the photograph based on the distance information according to the plain meaning of those terms, the examiner's *prima facie* case of obviousness fails with respect to all of the claims.

B. The examiner misstates scientific fact

Claims 5, 6, 12, and 13 have been rejected as being unpatentable under 35 U.S.C. § 103(a) over Nishimura et al. (U.S. Pat. No. 5,617,141) in view of Miyadera (U.S. Pat. No. 5,550,587). Applicant has argued that the rejection is improper because the references used in the rejection are improperly combined, and because even if the references are combined, the examiner has not made out a *prima facie* case of obviousness. (Appeal Brief pages 5-7)

Claim 5 recites the method of claim 1 wherein regions containing objects closer to the camera are lightened in the resulting photograph in relation to regions containing objects farther from the camera. The examiner relies on Miyadera to supply this claim element. (Examiner's Answer page 10) However, as Applicant has previously shown, Miyadera is concerned with adjusting the color balance of a photograph, and not the brightness. The examiner counters by asserting the Miyadera adjusts "color temperature", and states that "the examiner is interpreting the adjustment of the color temperature as the equivalent of lightening or darkening the image (the lower the temperature, the darker the image, and the higher the temperature, the lighter the image.)" (Examiner's Answer page 17)

It is well known that color temperature is an indicator of the spectral characteristics of an illuminant, and not a measure of the brightness of an image. It is true that some dim light sources emit light with lower color temperatures than do some bright sources. For example, a candle is often cited as emitting light with a color temperature of 1500K while a 200 watt incandescent lamp is often cited as emitting light with a color temperature of 3000K. However, a large number of candles close to a photographic subject may well illuminate the subject more brightly than would a single 200 watt lamp placed far from the subject. The candlelight would still have a color temperature of 1500K, even though it would be brighter than the light from the distant 200 watt lamp, which would still have a color temperature of 3000K. In other words, color temperature and brightness describe different illumination characteristics, and adjusting "color temperature" is not the equivalent of lightening or darkening an image.

Applicant reiterates that Miyadera does not teach or suggest a method wherein regions containing objects closer to the camera are lightened in the resulting photograph in relation to regions containing objects farther from the camera. In fact, as Applicant has previously shown, Miyadera teaches away from selectively lightening regions of an image because Miyadera attempts to preserve image brightness while adjusting color balance. (Appeal Brief pages 5-6) Accordingly, the examiner's *prima facie* case of obviousness fails with respect to claims 5, 6, 12, and 13 for these additional reasons.

CONCLUSION

In view of the above, Applicant requests that all of the examiner's claim rejections be reversed.

Respectfully submitted,

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